

TITLE 23. WATERS

DIVISION 2. DEPARTMENT OF WATER RESOURCES

CHAPTER 5.1 WATER CONSERVATION ACT OF 2009

NOTICE OF PROPOSED RULEMAKING

Related to Rulemaking File #2011-1219-04C

NOTICE IS HEREBY GIVEN that the Department of Water Resources (Department) proposes to adopt the proposed regulation described below after considering comments, objections, and recommendations regarding the proposed action.

PROPOSED REGULATORY ACTION

This proposed regulation is a Certificate of Compliance rulemaking following the rulemaking file #2011-1219-04C. The Department proposes to amend Chapter 5.1, Sections 597, Aggregated Farm-Gate Delivery Report Form (Rev. 6-20-2013, incorporated by reference), Division 2 of the California Code of Regulations.

This proposed amendment would modify the Agricultural Aggregated Farm-Gate Delivery Reporting Format for Article 2 (Rev. 7-05-2013) from a fiscal year format (June-July) to a calendar year format (January-December). The revised Form would be required to be used beginning July 31, 2014.

OPPORTUNITY FOR PUBLIC COMMENT

WRITTEN COMMENT PERIOD

The opportunity to submit written comment begins July 5, 2013 and closes at 5:00 PM, August 21, 2013.

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action.

Submit written comments to:

Marty Berbach
Department of Water Resources
901 P Street, Suite 313A
Sacramento, CA 95814
Martin.Berbach@water.ca.gov

PUBLIC HEARINGS

The Department will also hold one public hearing. This hearing will be held in accordance with the requirements set forth in Government Code section 11346.8.

August 21, 2013
9:00am to 12:00pm
Hearing Room, 1st Floor
Bonderson Building
901 P Street
Sacramento, California 95814

AVAILABILITY OF MATERIALS

The following materials are available for public review throughout the public comment period:

- Text of Proposed Regulation
- Notice of Proposed Rulemaking
- Initial Statement of Reasons
- Materials Relied Upon
- Form 400
- Form 399
- Final Statement of Reasons (when it is prepared)
- Final Text of Regulation

These materials may be viewed by either:

Visiting the Department's website

<http://www.water.ca.gov/wateruseefficiency/sb7/committees/ag/a2/>

Or arranging an in-person review. Please contact Marty Berbach.

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AVAILABILITY OF CHANGED OR MODIFIED TEXT

After holding the hearing and considering all timely and relevant comments, and responding to any comments as necessary, the Department may adopt the proposed regulations substantially as described in this notice. If the Department makes modifications which are sufficiently related to the originally proposed text, it will make the modified text (with the changes clearly indicated) available to the public for at least 15 days before the Department adopts the regulations as revised. Please send requests for copies of any modified regulations to the attention of Marty Berbach at the address indicated above.

The Department will accept written comments on the modified regulations for 15 days after the date on which they are made available.

MATERIALS RELIED UPON

1. Economic Impact Analysis June 28, 2013, for this rule amendment.

AUTHORITY AND REFERENCE

The modification of the Form is necessary and helps the agricultural water suppliers to comply with the regulation and to implement the requirements of the Water Code listed here:

Water Code Section §10608.48(b), paragraphs (1) and (2) specify agricultural water suppliers' reporting of aggregated farm-gate water delivery and adopting a volumetric water pricing structure as the purposes of water measurement.

Water Code Section 531.10 (AB 1404, 2007) requires agricultural water suppliers to report aggregated farm-gate delivery to DWR. Section 531.10(a) requires that "An agricultural water supplier shall submit an annual report to the department that summarizes aggregated farm-gate delivery data, on a monthly or bi-monthly basis, using best professional practices". It also defines "aggregated farm-gate delivery to mean "information reflecting the total volume of water an agricultural water supplier provides to its customers and is calculated by totaling its deliveries to individual customers".

Water Code Section 10608.48(i) authorizes the Department to adopt regulations concerning these water measurement reports.

The Aggregated Farm-gate Delivery Form is incorporated by reference into §597 of the Agricultural Water Measurement regulation that was finalized in July 2012.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

The Agricultural Water Measurement Regulation (Regulation) approved by the Office of Administrative Law on July 11, 2012 (Rulemaking File #2011-1219-04C) contains the Agricultural Aggregated Farm-Gate Delivery Reporting Format for Article 2 (rev. 6-20-2012) incorporated by reference in Title 23 CCR 597. The purpose of the regulation was to provide a range of water measurement options that agricultural water suppliers may use or implement to comply with the measurement requirement in paragraph (1) of subdivision (b) of Water Code Section 10608.48.

Section 10608 (e) of the Water Code declares that "the success of state and local water conservation programs to increase efficiency of water use is best determined on the basis of measureable outcomes related to water use or efficiency". Section 10608.48 requires implementation of specific efficient water management practices (EWMP) for agricultural water use. Section 10608.48 (b) specifically deems two of the EWMPs as critical and that agricultural water suppliers shall implement them: (1) measuring the volume of water delivered to customers with sufficient accuracy (the subject of this regulation), and (2) adopting a pricing structure for water customers based at least in part on quantity delivered. This regulation provides a range of water measurement options that allow agricultural

water suppliers to implement the critical EWMPs to comply with the requirements of Section 10608.48 (b).

During the final stage of the adoption of the Regulation by the California Water Commission, DWR received some informal comments requesting revision of the Form from fiscal year (July through June) to calendar year (January to December). After the approval of the regulation, the Department received additional comments requesting the change.

The specific benefit anticipated by the proposed rule amendment is to provide an Agricultural Aggregated Farm-Gate Delivery Reporting Format for Article 2 (Rev. 7-05-2013) from a fiscal year format (June-July) to a calendar year format (January-December). This amendment would promote fairness, and increase the openness and transparency in business and government. The calendar format is more easily understood by the public and agricultural water districts. It would be more user-friendly for agricultural water districts to comply with the regulation in a timely matter. A form that uses a calendar year format would allow for agricultural water districts up to 6 months to aggregate water delivery data from the previous year, and to submit the data to the Department by July 31 the next year.

The Department has conducted a review and has determined that the proposed regulations are neither inconsistent nor incompatible with existing state regulations.

Objectives of the Proposed Regulation

The objective of the proposed regulation amendment is to have a Form that reflects a calendar year and is better understood by agricultural water suppliers. Additionally, the agricultural water suppliers will have up to seven months to compile their water delivery data from January to December of the a calendar year and submit it to the Department by July of the subsequent year. Currently agricultural water suppliers have to report to the State Water Resources Control Board, Division of Water Rights, on their diversions on a calendar year (Jan-Dec) basis. Therefore, the Department has revised the calendar of the Form as follows:

- Change format from fiscal year (July-June) to calendar year (January-December).
- The revised form is to be submitted by July, 2014, for 2013 calendar year data.
- All other parts of the form remain the same. The annual date of submittal is unchanged.

Incorporated by Reference Form: Agricultural Aggregated Farm – Gate Delivery Reporting Format for Article 2 (Rev. 7-05-2013.)

Comparable Federal Regulation or Statutes

The United States Bureau of Reclamation Conservation and Efficiency Criteria (2011) - Public Law 102-575, §3405 (e). This law applies only to federal water contractors.

DISCLOSURES REGARDING THE PROPOSED ACTION

DETERMINATION OF NO MANDATE

The proposed regulation does not impose a mandate on local agencies or school districts.

ESTIMATE OF COSTS OR SAVINGS

This is not a new regulation, and is a non-substantial modification of existing regulation. Only Agricultural water suppliers that provide water to more than 2,000 acres of irrigated land are subject to this regulation.

<u>Costs or Savings to Any State Agency:</u>	None
<u>Cost to Any Local Agency or School District that is required to be reimbursed under Part 7 (commencing with Section 17500) of Division 4, Government Code:</u>	None
<u>Other Nondiscretionary Costs or Savings Imposed on Local Agencies:</u>	None
<u>Costs or Savings in Federal Funding to the State:</u>	None

COST IMPACTS ON A REPRESENTATIVE PRIVATE PERSON OR BUSINESS

The Department is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

There is no anticipated cost to the agricultural water suppliers associated with complying with the regulation amendment.

RESULTS OF THE ECONOMIC IMPACT ANALYSIS

The proposed regulation for Aggregated Farm-gate Delivery Form amends an existing regulation that does not substantially change reporting requirements. Therefore, this amendment will not:

- Create or eliminate jobs within California;
- Create or eliminate existing businesses within California;
- Affect the expansion of businesses currently doing business within California.
- Will not have any effect on the health and welfare of California residents, worker safety, and the state's environment.

SIGNIFICANT/STATEWIDE BUSINESS IMPACT DETERMINATION

The Department has made an initial determination that the proposed regulations will not have a significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

REPORTS REQUIRED FROM BUSINESSES

The proposed regulation amendment for Aggregated Farm-gate Delivery Reporting does not apply to private businesses. It will require reporting on water measurement by agricultural water suppliers, most of which are public agencies. This is not a new requirement, and is an existing cost, and there will not be any new additional costs.

SIGNIFICANT EFFECT ON HOUSING COST: None

SMALL BUSINESS DETERMINATION: The proposed regulation amendment is not likely to affect small businesses. This amendment would not make any specific new requirements to small businesses. This amendment would not change the type or amount of data reporting to the Department by agricultural water districts, most of which are public agencies.

CONSIDERATION OF ALTERNATIVES

The Department must determine that no reasonable alternative it considered or that has otherwise been identified and brought to its attention would be more effective in carrying out the purpose for which the action is proposed, would be as effective as and less burdensome to affected private persons than the proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

Interested persons may present statements or arguments with respect to alternatives to the proposed regulations at the scheduled hearing or during the written comment period.

CONTACT PERSONS

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